HIGH COURT OF JUDICATURE CHHATTISGARH : BILASPUR

DIVISION BENCH

CORAM : HON'BLE SHRI S.R. NAYAK, C.J.
HON'BLE SHRI D.R. DESHMUKH, J.

Misc. Appeal NO. 1109 OF 2004

अपीलार्थी अनावेदक कमांक – 3,		नेशनल इंश्योरेंस कम्पनी लिमिटेड शाखा – बिलासपुर, द्वारा / सहायक प्रबंधक, विधिक प्रियदर्शनी नगर, बिलासपुर तहसील व जिला बिलासपुर
		–विरूद्ध–
उत्तरवादी–गण आवेदक–गण	1	श्रीमती शंकुतला बाई आयु 26 साल, विधवा हरीशचन्द्र वस्त्रकार
	2	विष्णु प्रसाद आयु 14 साल, पिता हरीश चन्द्र वस्त्रकार, अवयस्क वली मां श्रीमती शंकुतला बाई विधवा हरीशचन्द्र आयु 26 साल,
	3	कु0 गंगा आयु 9 साल, पिता हरीशचन्द्र वस्त्रकार नाबालिग जरिये वली मां श्रीमती शंकुतला बाई विधवा हरीशचन्द्र वस्त्रकार तीनों निवासी ग्राम गतौरा तहसील मस्तूरी, जिला बिलासपुर छ0ग0
	4	लतेलराम आयु 60 साल; पिता स्व0 दीनदयाल वस्त्रकार
	5	श्रीमती चन्द्रिका बाई आयु 55 साल, पति लतेलराम वस्त्रकार, दोनो निवासी ग्राम परसदा तहसील तखतपूर जिला बिलासपुर छ0ग0
उत्तरवादी–गण अनावेदक कमांक–1 तथा 2	6	सुखविन्दरसिंह आयु 37 साल, पिता अनैत सिंह सारथी निवासी बिरगहनी चौक, चांपा तहसील जांजगीर जिला जांजगीर चांपा

7 शिवकुमार अग्रवाल आत्मज सीताराम
अग्रवाल निवासी सदर बाजार चांपा
छ0ग0 आयु 42 साल, लगभग, तहसील जाजगीर चांपा
जिला जाजगीर चांपा छ0ग0

Present : Shri Shree Kumar Agrawal, Sr. Advocate with Shri A.K. Gupta, learned counsel for the appellant.

Shri Shrawan Chandel, learned counsel for respondents No. 1, 4 & 5.

(ORAL ORDER)
(Passed on 20th February, 2006)

The following order of the Court was passed by **S.R. Nayak, C.J.**

In this appeal preferred by the Insurance Company, the liability fastened by the learned MACT on the Insurance Company to pay compensation has been disputed on the ground that the policy issued by the appellant – Insurance Company did not cover the risk and that the driver of the motor vehicle involved in the accident and insured by the appellant – Insurance Company, on the date of accident, did not have valid and effective driving license. The MACT has referred to the authenticated copies of the insurance policy as well as driving licence held by the driver of the motor vehicle involved in the accident, produced before it in the award.

2. The contention of the learned counsel for the appellant is that the above two documents were not marked in the course of the evidence and, therefore, the MACT ought not to have placed reliance on the above documents. At this stage itself, it needs to be noticed that the appellant – Insurance Company having raised the plea that the policy issued by it did not cover the risk, ought to have produced the policy before the MACT for its consideration. Admittedly, it did not do so. Further, it needs to be noticed

that if the Insurance Company wants to deny the liability to pay compensation on the ground that the driver of the motor vehicle involved in the accident did not have valid and effective driving licence as on the date of accident, it is the burden on the Insurance Company not only to raise such plea in the pleadings, but, also to prove that plea by substantive legal evidence. Here again, the Insurance Company did not adduce any evidence to prove the plea that the driver of the motor vehicle involved in the accident as on the date of accident did not have valid and effective driving license. The appeal is devoid of merit and it is accordingly dismissed. No costs.

Sd/-
Chief Justice

Sdl-
Dilip Raosaheb Deshmukh
Judge

Subba